CASE NO. 89-390

In The Supreme Court of the United States

October Term, 1989

PENSION BENEFIT GUARANTY CORPORATION,
Petitioner,

v.

THE LTV CORPORATION; LTV STEEL COMPANY, INC.; THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF LTV STEEL COMPANY, INC. AND CERTAIN FACILITIES; PARENT CREDITORS COMMITTEE OF THE LTV CORPORATION; LTV BANK GROUP; OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; BANCTEXAS DALLAS, N.A.; FIFTH THIRD BANK; HUNTINGTON NATIONAL BANK; CITIBANK, N.A.; DAVID H. MILLER AND WILLIAM W. SHAFFER,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF OF AMICUS CURIAE THE STATE OF OHIO

ANTHONY J. CELEBREZZE, JR.
Attorney General of Ohio

LOREN L. BRAVERMAN
Deputy Chief Counsel
Counsel of Record
30 East Broad Street, 17th Floor
Columbus, Ohio 43266-0410
(614) 466-5026

**Counsel for Amicus Curiae
The State of Ohio**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASE NO. 89-390

In The Supreme Court of the United States

October Term, 1989

PENSION BENEFIT GUARANTY CORPORATION,
Petitioner,

v.

THE LTV CORPORATION; LTV STEEL COMPANY, INC.; THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF LTV STEEL COMPANY, INC. AND CERTAIN FACILITIES; PARENT CREDITORS COMMITTEE OF THE LTV CORPORATION; LTV BANK GROUP; OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS; BANCTEXAS DALLAS, N.A.; FIFTH THIRD BANK; HUNTINGTON NATIONAL BANK; CITIBANK, N.A.; DAVID H. MILLER AND WILLIAM W. SHAFFER,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF AMICUS CURIAE THE STATE OF OHIO

INTEREST OF THE AMICUS CURIAE

Pursuant to Rule 36.4 of the Rules of the Supreme Court of the United States, the State of Ohio submits this brief as *amicus curiae* in support of the position espoused by the LTV Respondents. Ohio is the situs of a number of facilities formerly operated by LTV Steel Company, Inc. ("LTV" or "LTV

Steel") or its predecessor companies and is the home of several presently operating facilities.[1] Presently, LTV Steel employs approximately 9,800 persons in its Ohio facilities and has 24,500 retirees residing in Ohio. In 1988, LTV Steel paid approximately $572,000,000 in wages to Ohio employees. Approximately $25,550,000 in taxes withheld from those employees were transmitted to Ohio state and local taxing authorities. LTV Steel itself paid over $34,000,000 in taxes to Ohio state and local government. In addition, numerous business entities employing thousands of Ohioans are economically dependent upon LTV Steel's ability to successfully reorganize as a viable steel manufacturer.

This litigation potentially could have profound consequences upon a significant number of Ohio's citizens, its economy,[2] and its state and local government. The Pension Benefit Guaranty Corporation ("PBGC"), by pursuing a restoration order without any consideration of fundamental labor and bankruptcy policies, or even adequately considering the economic effect of restoration upon LTV Steel, has placed at risk the economic future of LTV Steel, its employees,

[1] Presently LTV Steel's Ohio-based operations are:
Corporate Headquarters - Cleveland, Ohio
Cleveland Works Steel Plant - Cleveland, Ohio
Tubular Plant - Cleveland, Ohio
Electrogalvanizing Plant - L-S E - Cleveland, Ohio (joint venture)
Lime Plant - Grand River, Ohio
Technology Center - Independence, Ohio
Ore Dock - Lorain, Ohio
Coke Plant - Warren, Ohio
Tubular Plant - Youngstown, Ohio
Tubular Plant - Elyria, Ohio
Electrogalvanizing Plant - L-S II - Columbus, Ohio (joint venture - under construction)

[2] The American Iron & Steel Institute estimates that every steel plant job creates four steel-related jobs. Every 100 steel and steel-related jobs creates 32 non- manufacturing support jobs in the immediate area. 1988 tax revenue in Ohio for Ohio jobs indirectly related to LTV Steel (steel-related and support) in 1988 was approximately $66,500,000 for an estimated 38,000 workers (and 144,000 dependents).

retirees, and those directly and indirectly dependent upon them. Moreover, by pursuing restoration, the PBGC is attempting to substantially improve its own bankruptcy claim to the detriment of all other creditors including the State of Ohio.[3] Manifestly, Ohio has a significant interest in this case.

STATEMENT OF THE CASE

1. Background

LTV Steel, headquartered in Cleveland, Ohio, is comprised of the remaining facilities of three major steel companies, Jones & Laughlin Steel Company, Youngstown Sheet & Tube Company, and Republic Steel Corporation. Pet. App. 36a. LTV Steel was created by a merger of these companies in the hope that the combined entity would be more efficient and therefore better able to compete in the global market. Pet. App. 37a. Upon merger, LTV Steel assumed massive pension and other obligations resulting from prior plant closings. *Id.* As a result, LTV Steel's growing pension and retiree health liabilities rested on a shrinking employee base. In 1986, LTV Steel retirees outnumbered its active employees by a ratio of more than three to one.[4]

By 1986, LTV Steel was suffering record losses, declining steel shipments, and impending defaults under its credit arrangements. JA 152. On July 17, 1986, LTV Steel and its affiliates filed Chapter 11 bankruptcy petitions. *Id.*

---

[3] Ohio state and local taxing authorities have liquidated claims in the LTV bankruptcy totalling approximately $26 million. Other Ohio state claims of undetermined amounts are still pending.

[4] In 1986, LTV Steel had 77,182 retirees while its active workforce dropped to 24,544, yielding a ratio of 3.14 retirees per active employee. Pet. App. 37a. This employment shrinkage is indicative of the state of heavy industry in Ohio beginning in the late 1970s. For example, employment in durable goods industries in Ohio fell over 25% between 1978 and 1983.

2. Termination and "Restoration" of the Plans

After being advised in December, 1986 that LTV Steel could not and would not fund its pension plans, JA 126, the PBGC instituted involuntary termination proceedings with respect to LTV's three remaining pension plans (one had already been terminated) in the United States District Court for the Southern District of New York. JA 321-22. The United Steelworkers of America ("USWA"), the exclusive bargaining representative of the vast majority of LTV Steel's hourly employees, challenged the proposed termination, but the District Court and, later, the Court of Appeals for the Second Circuit, found for the PBGC. *Jones & Laughlin Hourly Pension Plan v. LTV Corp.*, 824 F.2d 197 (2d Cir. 1987). The plans were terminated effective January 13, 1987. JA 141-42.

The USWA then instituted an adversary proceeding in the Bankruptcy Court seeking to hold LTV Steel liable for the terminated pension benefits under the provisions of the 1986 collective bargaining agreement between LTV Steel and the USWA. Pet. App. 43a. After months of difficult, tense, and complicated negotiations, the USWA and LTV Steel reached an agreement, the term of which was limited to the period of LTV Steel's reorganization. JA 154. Under the terms of the agreement, the USWA made concessions which LTV Steel estimated would save it $50 million per year. In exchange, LTV Steel agreed to an array of new programs designed to replace some of the benefits lost as the result of the involuntary termination of the pension plans. JA 154-167.[5]

In July 1987, the Bankruptcy Court approved, over the objection of the PBGC, the collective bargaining agreement as an interim measure, finding that it was necessary for LTV Steel's bankruptcy reorganization. JA 258-61. The Bankruptcy Court concluded that "the implementation of

---

[5] The new programs differ significantly from the terminated pension plans as follows: 1) none of the new programs are covered by guarantee coverage provided by PBGC; 2) many of the programs are provided through purchase of insurance, not pension coverage, and 3) retirement qualifications were toughened. Pet. App. 109a.

these agreements will help resolve some of the most troubling issues raised to date in this bankruptcy case and will help to alleviate the extreme hardship suffered by Debtor's retirees and employees, as has been shown to exist in the cumulative record of these proceedings." JA 259.

In September 1987, the PBGC, having attempted without success to prevent approval of the collective bargaining agreement in the Bankruptcy Court, attempted to "restore" three of the four terminated pension plans. Pet. App. 182a. The PBGC asserted two grounds for its restoration decision. First, it argued that the interim establishment of new programs replacing some lost pension benefits was an "abuse" of the pension insurance system. Second, it asserted in the months that had elapsed since terminations, LTV Steel's finances had improved such that it could afford the plans. *Id.* Subsequently, the PBGC asked the United States District Court for the Southern District of New York to enforce its restoration order.

The District Court, in *In Re Chateaugay Corp.*, 87 B.R. 779 (S.D.N.Y. 1988) (Pet. App. 28a), refused enforcement and its determination was affirmed by the Second Circuit Court of Appeals in *Pension Benefit Guaranty Corporation v. LTV Corporation*, 875 F.2d 1008 (2d Cir. 1989) (Pet. App. 1a). Both the district court and the court of appeals found that PBGC's decision was arbitrary and capricious. First, they found there was no basis in the Employee Retirement Income Security Act of 1974 ("ERISA") for concluding that the interim plans were an "abuse" of the pension insurance system. Second, the district and appellate courts held that the PBGC never considered the fundamental federal bankruptcy law and labor law policies affected by restoration. Third, they concluded that the agency did not prove, as it had to, that LTV Steel's financial condition had improved to the point where LTV Steel could afford restoration. In this regard, the PBGC was faulted for engaging in no analysis which showed that the company's improved condition was anything other than that which would be expected of any other Chapter 11 debtor-in-possession. Moreover, the courts observed that the PBGC's analysis failed to take into account the fact that the

cash accumulated in Chapter 11 was required to benefit all creditors, not just the PBGC. Finally, the courts determined that the PBGC failed to consider the financial effects of possible retermination. Accordingly, the district court declined to enforce the PBGC's restoration order and the court of appeals affirmed that determination.

SUMMARY OF ARGUMENT

The power of the PBGC to order the restoration of pension plans under the authority of Section 4047 of ERISA, 29 U.S.C. §1047, cannot be considered without reference to other important and relevant federal policies. Specifically, where the PBGC attempts to order restoration of involuntarily terminated pension plans because it has determined that a collective bargaining agreement between a Chapter 11 debtor-in-possession and the union representing its employees provides new programs to replace, in part, benefits lost due to termination, it must first consider the federal policies embodied in the bankruptcy and labor laws.

The fundamental purpose of reorganization is to help a debtor avoid liquidation, so as to preserve jobs and avoid misuse of economic resources, while promoting the equitable distribution of the debtor's assets to creditors. *NLRB v. Bildisco,* 465 U.S. 513, 528 (1984). A second federal policy, that of supporting and encouraging collective bargaining as a means of resolving disputes between employers and employees, is not diminished when an employer files a Chapter 11 petition. Through the enactment of Section 1113 of the Bankruptcy Code, 11 U.S.C. §1113, Congress has insured the importance of collective bargaining is recognized in the bankruptcy setting.

Had the PBGC given adequate consideration to federal bankruptcy and labor policies, it would not have found that the collectively bargained 1987 replacement benefits abused the pension insurance system. Rather, it would have found that they were part of an agreement negotiated in good faith and in accordance with the obligations imposed on each

side by law. Moreover, the agreement reached was necessary to achieve the goal of rehabilitaton for LTV Steel. As such, the agreements comported with principles of labor and bankruptcy law, did not violate ERISA, and advanced the interests of LTV Steel, its employees, retirees, creditors, and the State of Ohio.

While it cannot be disputed that Section 4047 of ERISA authorizes the restoration of an involuntarily terminated pension plan if an employer can afford its administration and funding, that provision does not authorize restoration in the absence of adequate evidence or analysis with respect to that question.

The district court, as required by *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 416-17 (1971), required the PBGC to make a reasoned decision taking into account all relevant information. The PBGC did not do this. There is no assurance from the record developed by the PBGC that restoration of the plans would not result in the destruction of LTV Steel's attempt to reorganize, or even that retermination would not be likely. While Ohio does not argue that these consequences necessarily would flow from restoration, it does note that there is no way to make such a determination on the present state of the administrative record. Given the profoundly negative consequences to all concerned, including the State of Ohio and its citizens, of either liquidation or retermination, a decision by the PBGC to restore the LTV Steel plans should not have been made in the absence of adequate evidence or analysis.

ARGUMENT

I. THE PBGC ACTED UNREASONABLY BY FAILING TO CONSIDER FUNDAMENTAL FEDERAL BANKRUPTCY AND LABOR LAW POLICIES WHEN IT ATTEMPTED TO RESTORE THE INVOLUNTARILY TERMINATED PLANS.

In its brief, the PBGC continues to assert that Section 4047 of ERISA (A.3) grants it plenary authority to restore involuntarily terminated pension plans under its "abuse" policy, authority which permits it to ignore important federal policies embodied in bankruptcy and labor laws. Similarly, PBGC argues that it need not consider the possibility that restored plans might shortly have to be reterminated. Pet. Br. at 35, 39.

These views as espoused by the PBGC are particularly disturbing to the State of Ohio. It is critical that the valid interests of a state in the continued viability of industry within its borders and the well-being of employees and retirees of those industries be considered. Moreover, a state's status as a creditor seeking protection of its claims under Chapter 11 should not be forgotten. The State of Ohio believes that consideration by the PBGC of fundamental federal bankruptcy and labor law policies would have allowed these important state concerns to be adequately addressed.

The goal of Chapter 11 of the Bankruptcy Code is the successful rehabilitation of the debtor. *NLRB v. Bildisco & Bildisco*, 465 U.S. 512, 527 (1984). Recognizing that "[i]t is more economically efficient to reorganize than to liquidate, because it preserves jobs and assets," Congress has long favored reorganizations. H.R. Rep. No. 595, 95th Cong., 2d Sess. 220, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5963, 6179. See, also, *NLRB v. Bildisco & Bildisco*, 465 U.S. at 528, citing to the same report ("The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources.") As noted by the Court of Appeals, "the results of reorganization are the shielding of the debtor from the financial pressures imposed by its creditors and the promotion of the equitable distribution of the debtor's assets to its creditors." 875 F.2d at 1016 (citing *NLRB v. Bildisco*, 465 U.S. at 528 and *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983).

The State of Ohio is concerned by the PBGC's refusal to consider this fundamental policy, as is evidenced by the

agency's assertion that the cash accumulated by LTV Steel during the reorganization demonstrates that LTV Steel can afford the terminated plans. Such funds are to be used to satisfy the claims of all creditors, not merely to satisfy the claim of one to the detriment of all others. Moreover, the accumulation of funds as a result of reorganization offers scant support for the proposition that a debtor can afford previously terminated pension plans.

In this case, a second federal policy must also be considered. For over a half-century, the Nation's labor policy has been to mandate and support the collective bargaining process as the method of resolving disputes between employers and employees, thereby promoting labor peace. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937); *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 674 (1981). *See also* 29 U.S.C. §151 (encouraging collective bargaining is "declared to be the policy of the United States"). This obligation applies with respect to the provision of pension benefits. *Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 159 (1971) (non-wage benefits such as group health insurance are mandatory subject of bargaining); *In Re: Century Brass Products, Inc.* 795 F.2d 265, 274 (2d Cir.), *cert. denied*, 479 U.S. 949 (1986) ("pension and insurance benefits for active employees" are mandatory subjects of bargaining).

The duty to collectively bargain is not extinguished by the filing of a Chapter 11 petition. *NLRB v. Bildisco & Bildisco*, 465 U.S. at 523. In *Bildisco*, this Court recognized the special nature of collectively bargained contracts but held that such agreements were not to be treated in a reorganization proceeding differently from other contracts. 465 U.S. at 527. Congress responded by enacting Section 1113 of the Bankruptcy Code, 11 U.S.C. §1113, (A.1), which expressly extended into the bankruptcy setting the goals and policies of federal labor law. *Century Brass*, 795 F.2d at 273.

The USWA and LTV Steel brought to the bargaining table the issue of new pension benefits not for the purpose of

abusing the pension insurance system, but to meet their obligations under the Bankruptcy Code and federal labor law. The resulting agreement was entirely consistent with these important federal interests, as well as the policies embodied in ERISA. LTV Steel's employees and retirees were relieved of the extreme hardships which occurred when their benefits were in significant part cut off by the plan terminations. In exchange for the new benefits, LTV Steel achieved agreements from the USWA that it estimated would result in annual cost savings of $50 million, settlement of the adversary proceeding instituted by the USWA for breach of its 1986 collective bargaining agreement, and labor peace. As the Bankruptcy Court noted, ". . . the terms and payments contemplated by the agreements . . . are clearly necessary and appropriate to the goal of rehabilitation for the Chapter 11 debtor." JA 260.

Because the interests of the employees and retirees of LTV Steel, its creditors, the State of Ohio, and the company itself were plainly advanced by the 1987 collective bargaining agreement in a manner consistent with the principles of bankruptcy law, federal labor law, and ERISA, the judgments of both the district and appellate courts concluding that the agreements did not abuse the pension insurance system were correct and should be affirmed.

II. THE PBGC ACTED UNREASONABLY WHEN IT ORDERED RESTORATION IN THE ABSENCE OF EVIDENCE OR ANALYSIS SUFFICIENT TO DEMONSTRATE THAT LTV STEEL COULD AFFORD TO FUND AND ADMINISTER THE PLAN.

The PBGC's erroneous refusal to consider applicable federal bankruptcy and labor policies manifests itself in its determination that LTV Steel could afford restoration of the three terminated pension plans. In particular, the PBGC's failure to consider the goals of reorganization may have caused it to eschew analysis of LTV Steel's long-term financial health and thereby ignore matters of vital concern to Ohio, i.e., the impact of restoration upon a number of Ohio

citizens and the state's economy.

The State of Ohio does not dispute that, under Section 4047 of ERISA, PBGC may restore an involuntarily terminated pension plan if an employer can afford it. The State of Ohio does not believe that Section 4047 grants to the PBGC authority to base affordability conclusions on insufficient evidence and analysis. The district court appropriately subjected the PBGC's affordability determination to a "thorough, probing, in depth review" as required by this Court in *Citizens to Preserve Overton Park, Inc. v. Volpe,* 401 U.S. 402, 416-417 (1971), "to determine whether the agency's decision-making process was reasoned, took into account all relevant policies and information, and reached a result consistent with congressional intent." 87 B.R. at 807. Here, the PBGC simply did not adequately consider what effect restoration would have on the company's prospects for continued existence. To blindly make such a critical decision is risky indeed.

There is no assurance from the record developed by the PBGC that restoration of the three terminated pension plans would not destroy LTV Steel's attempt to reorganize with the result that it would be placed in liquidation. Even excluding this possibility, there is likewise no basis in the PBGC's administrative record from which to conclude that LTV Steel could administer these pension plans without the likelihood of retermination.

Either of these consequences would have grave implications for the state of Ohio. Liquidation would throw thousands of Ohioans out of work. The State's unemployment compensation system and workers compensation systems would be affected dramatically.[6] And, as noted earlier, substantial tax revenues would be lost. Moreover, thousands of former LTV Steel employees - both those laid off and those retired (and their dependents) - would lose their health and life insurance benefits, not to mention substantial portions of their retirement income. The effect on the State's economy would be devastating.

[6] LTV Steel's annual workers' compensation payouts in Ohio are presently $16.5 million; it is estimated that present outstanding claims liability is $28 million. LTV estimates that it will pay $2.5 million in unemployment compensation taxes to the State in 1990. If all LTV Steel employees were laid off, it is estimated that the State would pay affected employees $2,730,000 per *week.*

Even the less drastic possibility of retermination yields results which would impact Ohio adversely. Retirees would again be left in a condition of extreme hardship. Also, instability in the workforce, such as strikes, might ensue.

Ohio does not argue that either liquidation or retermination will result if the terminated pension plans are restored. There is no way that such a determination can be made on the present state of the PBGC's administrative record. As noted by both the district and appellate courts, the PBGC's affordability determination was premised on: a review of operating income figures for too short a period; an "unexplained and unexamined" assumption that LTV Steel would be granted previously denied or revoked Internal Revenue Service contribution waivers and that the USWA would, in the face of restoration, maintain in place the concessions that resulted in annual savings to LTV Steel of $50 million; analysis of LTV Steel's cash flow without considering the effect of Chapter 11 upon it or the right of other creditors to their fair share of those funds; and an exclusive focus on short term factors. 875 F.2d at 1019-20. The PBGC's analysis could neither accurately determine affordability nor measure the effect of restoration on the interests of others, including Ohio. Certainly more is and should be required of the PBGC to justify decisions of such a critical nature.

The analysis employed by the district court and court of appeals in reviewing the PBGC's affordability determination was appropriate and correct, for it provides a framework for accurately determining not only whether a business can in fact bear the cost of a restored plan but the impact of restoration on the legitimate interests of the states within whose borders the companies, the employees, retirees, and

creditors reside. The conclusion of the lower courts that the PBGC's affordability analysis was inadequate should be affirmed.

CONCLUSION

This Court should affirm the unanimous decisions of the district court and the court of appeals which have given exhaustive consideration to this matter. The PBGC should not be permitted to administer ERISA in a vacuum ignoring fundamental national bankruptcy and labor policies to the detriment of the states and their citizens.

Respectfully submitted,

ANTHONY J. CELEBREZZE, JR.
Attorney General of Ohio

LOREN L. BRAVERMAN
Deputy Chief Counsel
Counsel of Record
30 East Broad St., 17th Floor
Columbus, Ohio 43266-0410
(614) 466-5026

Counsel for Amicus Curiae
The State of Ohio

APPENDIX TO THE BRIEF OF AMICUS CURIAE

Section 1113 of the Bankruptcy Code, 11 U.S.C. §1113.

(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

(b)(1) Subsequent to filing a petition and prior to filing rejection of a collective bargaining agreement, the debtor in possession or trustee (hereinafter in this section "trustee" shall include a debtor in possession), shall—

(A) make a proposal to the authorized representative of the employees covered by such agreement, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (d)(3), the representative of the employees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1) and ending on the date of the hearing provided for in subsection (d)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such agreement.

(c) The court shall approve an application for rejection of a collective bargaining agreement only if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);

(2) the authorized representative of the employees has refused to accept such proposal without good cause; and (3) the balance of the equities clearly favors rejection of such agreement.

(d)(1) Upon the filing of an application for rejection the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree.

(2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the employees' representative may agree to. If the court does not rule on such application within thirty days after the date of the commencement of the hearing, or within such additional time as the trustee and the employees' representative may agree to, the trustee may terminate or alter any provisions of the collective bargaining agreement pending the ruling of the court on such application.

(3) The court may enter such protective orders, consistent with the need of the authorized representative of the employee to evaluate the trustee's proposal and the application for rejection, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

(e) If during a period when the collective bargaining agreement continues in effect, and if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the terms, conditions, wages, benefits, or work rules provided by the collective bargaining agreement. Any hearing under this paragraph shall be scheduled in accordance with the needs of the trustee. The implementation of such interim changes shall not render the application for rejection moot.

(f) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.

Section 4047 of ERISA, 29 U.S.C. §1047.

Whenever the corporation determines that a plan which is to be terminated under section 1341 or 1342 of this title, or which is in the process of being terminated under section 1341 or 1342 of this title as a result of such circumstances as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated under section 1341 or 1342 of this title. In the case of a plan which

has been terminated under section 1341 or 1342 of this title the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under the subchapter, to take such action as may be necessary to restore the plan to its pre-termination status, including, but not limited to, the transfer to the employer or a plan adminstrator of control of part or all of the remaining assets and liabilities of the plan.